

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Norfolk Division**

NICOLAS SANCHEZ-GARCIA,  
#32518-177,

Petitioner,

v.

Action No. 2:18cv532

MARK J. BOLSTER,  
Acting Warden,

Respondent.

**UNITED STATES MAGISTRATE JUDGE'S  
REPORT AND RECOMMENDATION**

This matter is before the Court on inmate Nicolas Sanchez-Garcia's ("Sanchez-Garcia") *pro se* amended petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. ECF No. 13. Sanchez-Garcia is a federal prisoner convicted in the United States District Court for the Northern District of Texas, and confined in the Federal Correctional Institution in Petersburg, Virginia. ECF No. 5. Sanchez-Garcia filed a motion to vacate under 28 U.S.C. § 2255 in the Northern District of Texas, which included claims that good time credits were improperly taken following a disciplinary hearing and that he is being denied credit for prison programs. ECF No. 3. By order entered October 5, 2018, the United States District Court for the Northern District of Texas severed the portion of the section 2255 motion related to good time credits, opened a new section 2241 case regarding those claims, and transferred the new case to this Court. ECF Nos. 5, 6. The matter was referred to the undersigned on December 3, 2018. ECF No. 9. Following transfer to this Court, Sanchez-Garcia amended his petition. ECF No. 13.

This matter was referred to the United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Local Civil Rule 72 of the Rules of the United States

District Court for the Eastern District of Virginia. For the following reasons, the Court **RECOMMENDS** that Sanchez-Garcia's amended petition be **DISMISSED WITHOUT PREJUDICE** for failure to pay the filing fee.

After reviewing Sanchez-Garcia's inmate account report, the Court determined he has access to sufficient assets to pay a filing fee of \$5.00. ECF No. 12. On February 4, 2019, the Court ordered Sanchez-Garcia to send the \$5.00 filing fee, request an extension of time in which to pay the filing fee, or demonstrate that he lacked the ability to pay the \$5.00 filing fee. *Id.* In response to the order, Sanchez-Garcia filed a statement explaining, "I do have money but the money is for start[ing] all ove[r] [a]gain when I get out from prison." ECF No. 14.

The Court entered a show cause order on April 10, 2019. ECF No. 15. Sanchez-Garcia was again ordered to pay the \$5.00 filing fee, or explain why he lacked the ability to pay the \$5.00 filing fee, within thirty days. *Id.* The order indicated that if Sanchez-Garcia failed to comply with the order within thirty days, the matter would be submitted to a United States District Judge for dismissal without prejudice. *Id.* (citing *Evans v. Croom*, 650 F.2d 521 (4th Cir. 1981)).

No filing fee, request for extension of time to pay the filing fee, or a statement demonstrating Sanchez-Garcia's inability to pay the required fee has been received, and the time for responding to the show cause order has expired.

It is therefore **RECOMMENDED** that Sanchez-Garcia's petition be **DISMISSED WITHOUT PREJUDICE** to Sanchez-Garcia's refiling his petition with the appropriate filing fee or demonstration of an inability to pay the fee.

#### **REVIEW PROCEDURE**

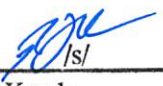
By copy of this report and recommendation, Sanchez-Garcia is notified that pursuant to 28 U.S.C. § 636(b)(1)(C):

1. Any party may serve upon the other party and file with the Clerk written objections to the foregoing findings and recommendations within fourteen (14) days from the date of mailing of this report to the objecting party, *see* 28 U.S.C. § 636(b)(1), computed pursuant to Rule 6(a) of the Federal Rules of Civil Procedure. Rule 6(d) of the Federal Rules of Civil Procedure permits an extra three (3) days, if service occurs by mail. A party may respond to any other party's objections within fourteen (14) days after being served with a copy thereof. *See* Fed. R. Civ. P. 72(b)(2) (also computed pursuant to Rule 6(a) and (d) of the Federal Rules of Civil Procedure).

2. A district judge shall make a *de novo* determination of those portions of this report or specified findings or recommendations to which objection is made.

Sanchez-Garcia is further notified that failure to file timely objections to the findings and recommendations set forth above will result in a waiver of appeal from a judgment of this Court based upon such findings and recommendations. *Thomas v. Arn*, 474 U.S. 140 (1985); *Carr v. Hutto*, 737 F.2d 433 (4th Cir. 1984); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).

The Clerk shall mail a copy of this report and recommendation to Sanchez-Garcia.

  
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Robert J. Krask  
United States Magistrate Judge

Robert J. Krask  
United States Magistrate Judge

Norfolk, Virginia  
July 23, 2019

**Clerk's Mailing Certificate**

A copy of the foregoing was provided electronically to counsel for respondent and was mailed this date to:

Nicolas Sanchez-Garcia, #32518-177  
BOP Petersburg FCI – Medium  
P.O. Box 1000  
Petersburg, VA 23804

Fernando Galindo, Clerk

By 

Deputy Clerk

July 24, 2019